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Supreme Court, U.S.
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No. 04-__

IN THE

Supreme Court of the United States

Russell J. Hadfield,

Petitioner,

v.

Joseph McDonough, in his individual and official capacity as Sheriff of Plymouth County, Massachusetts, et al.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532 (1985), this Court held that tenured state employees have a right under the Due Process Clause to notice and a hearing before they are terminated. The courts of appeals are divided over the following question:

Does the failure to provide the pre-termination hearing required under *Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532 (1985), no longer violate the Due Process Clause if denial of the hearing also contravenes state law and state law provides a post-termination remedy?

PARTIES TO THE PROCEEDINGS BELOW

In addition to the parties identified in the caption, defendants in the proceeding below include Matthew Hanley, in his individual and official capacity as Special Sheriff of Plymouth County; John P. Riordan, Robert J. Stone, and Peter G. Asiaf, Jr., in their official capacities as County Commissioners of Plymouth County; and John F. McLellan, in his official capacity as Treasurer of Plymouth County. Defendants Charles Lincoln and Coleman McDonough were voluntarily dismissed in the district court.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Russell J. Hadfield respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the First Circuit (Pet. App. 1a-16a) is published at 407 F.3d 11. The district court's order granting summary judgment in favor of respondents (Pet. App. 17a - 19a), dated October 22, 2003, is unpublished.

JURISDICTION

The judgment of the court of appeals was entered on May 11, 2005. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

RELEVANT CONSTITUTIONAL PROVISION

The Fourteenth Amendment to the U.S. Constitution provides in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

STATEMENT

1. Petitioner worked for the Plymouth County Massachusetts Sheriff's Department in various capacities from 1983 until early 2001, ultimately reaching the position of Assistant Deputy Superintendent in Field Services for Training ("ADS for Training"). Pet. App. 3a. In 2000, respondent Joseph McDonough defeated the incumbent in an election for Sheriff. Respondent terminated petitioner shortly after taking office. *Id.* 3a-4a.

Prior to his termination, petitioner had supported respondent McDonough's opponent in the Sheriff's election. Among other things, petitioner held campaign signs for the incumbent at various rallies. On November 4, 2000, on his way to one such event, petitioner passed another rally at

which many people were holding signs supporting McDonough. Petitioner attended this rally while holding a sign supporting McDonough's opponent. McDonough's brother and another supporter approached petitioner, telling him he should not be attending the rally, that his attendance was a "bad career move," and that he "[n]ow [was] at the top of the list." Pet. App. 3a.

After winning the election, McDonough summarily fired petitioner without explanation. Pet. App. 4a. Petitioner was given no prior notice of the impending action and was not given a pre-termination hearing. *Ibid.* Petitioner then asked for a hearing before the Plymouth County Board of Commissioners (which serves as the county personnel board) in order to show that he remained qualified for his position and was fired for his political affiliation with the prior Sheriff, an impermissible ground under state law.[1] The Board denied the request for a hearing. *Ibid.*

2. In April 2001, petitioner timely filed this 42 U.S.C. 1983 action in the United States District Court for the District of Massachusetts. Petitioner alleged that he was fired in violation of the First Amendment because of his support for the Sheriff's political rival. Petitioner also alleged that his summary dismissal violated the Due Process Clause because under *Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532 (1985), tenured state employees have a due process right to a pre-termination hearing. Pet. App. 4a.

Respondents moved for summary judgment. With respect to petitioner's due process claim, respondents acknowledged that under *Loudermill* a tenured public employee is entitled to a pre-termination hearing. See C.A. Joint App. 170.[2] They nonetheless asserted that the Sheriff's

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[1] See *Sheriff of Plymouth County* v. *Plymouth County Pers. Bd.*, 440 Mass. 708, 714 (2004).

[2] Respondents argued that petitioner was not a tenured public employee as a matter of state law, but the district court assumed

failure to provide one did not violate the Due Process Clause. In support, respondents relied on this Court's pre-*Loudermill* decisions in *Parratt* v. *Taylor*, 451 U.S. 527 (1981), and *Hudson* v. *Palmer*, 468 U.S. 517 (1984). See C.A. J.A. 170-77. Those rulings did not involve employment relationships. Rather, in those cases this Court held that the Due Process Clause was not violated when prison guards negligently (*Parratt*) or maliciously (*Hudson*) lost or destroyed a prisoner's property without first affording the inmate a hearing. See *Parratt*, 451 U.S. at 537; *Hudson*, 468 U.S. at 520. In both cases, this Court held that because the guards' conduct was "random and unauthorized" it would not have been feasible to provide a pre-deprivation hearing and, therefore, an adequate post-deprivation remedy was all the Due Process Clause required. See *Parratt*, 451 U.S. at 541-44; *Hudson*, 468 U.S. at 533-36.

In this case, respondents argued that the "*Parratt-Hudson*" doctrine establishes that the Due Process Clause is not violated by the "random and unauthorized" acts of public officials so long as an adequate post-deprivation remedy is available. Respondents noted that in accordance with *Loudermill*, a state statute required pre-termination hearings for tenured county employees. Thus, respondents reasoned, the Sheriff's failure to provide petitioner with a pre-termination hearing was necessarily "random and unauthorized" within the meaning of *Parratt-Hudson*. On that view, the failure to provide the pre-termination hearing required by *Loudermill* was not a violation of petitioner's federal due process rights because state law provided a post-termination remedy in the form of a right to challenge the termination in state court.

The district court agreed. Relying on the First Circuit's decision in *Lowe* v. *Scott*, 959 F.2d 323, 340 (1992), the court

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that he was for purposes of ruling on the motion for summary judgment. Pet. App. 18a.

held that petitioner's due process claims were barred by the *Parratt-Hudson* doctrine. Pet. App. 18a.[3]

4. The court of appeals affirmed. The court "assume[d] *arguendo* that Hadfield possessed a property interest in continued employment and the concomitant right to a hearing concerning his termination." Pet. App.13a. It nevertheless determined "that Hadfield's claim is barred by the *Parratt-Hudson* doctrine." *Id.* 12a. Under settled First Circuit precedent, "when a deprivation of a property interest is occasioned by random and unauthorized conduct by state officials * * * the due process inquiry is limited to the issue of the adequacy of the postdeprivation remedies provided by the state." *Id.* 13a (citations omitted). The court defined "random and unauthorized conduct," for *Parratt-Hudson* purposes, as including the class of cases in which a government official "misapplies state law to deny an individual the process due under a correct application of state law." *Ibid.* "In other words, conduct is 'random and unauthorized' within the meaning of *Parratt-Hudson* when the challenged state action is a flaw in the official's conduct rather than a flaw in the state law itself." *Id.* 13a-14a.

In this case, a state statute guaranteed tenured county employees the right to a pre-termination hearing. See Pet. App. 14a; Mass. Gen. Laws ch. 35, § 51. Thus, the court held, even if petitioner was entitled to a pre-termination hearing as a matter of federal constitutional law, respondent's violation of that right was "the sort of random and

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[3] The district court also entered summary judgment in respondents' favor on petitioner's First Amendment claims, accepting respondents' argument that political loyalty was a legitimate job requirement for petitioner's position as ADS for Training. Pet. App. 17a. The court of appeals subsequently affirmed that determination. *Id.* 5a-11a. Petitioner does not seek review of the holding that the First Amendment does not itself forbid petitioner's termination on the basis of his political affiliation.

unauthorized conduct to which *Parratt-Hudson* applies," because the denial was also a violation of the state civil service statute for county employees. *Id.* 15a. The court further concluded that state law provided petitioner an adequate post-termination remedy because he could appeal his dismissal to a state district court and obtain reinstatement. *Ibid.* Accordingly, because state law provided an adequate post-termination remedy, the failure to provide the pre-termination hearing otherwise required by *Loudermill* did not violate petitioner's due process rights. *Id.* 15a-16a.

In reaching this conclusion, the court of appeals acknowledged that "other courts * * * have taken a narrower view of 'random and unauthorized conduct,'" citing as an example the Ninth Circuit's decision in *Honey* v. *Distelrath*, 195 F.3d 531, 533-34 (1999). See Pet. App. 14a n.6. But the panel concluded that it was bound to follow the First Circuit's "broader view." *Ibid.*

5. This petition followed.

REASONS FOR GRANTING THE WRIT

The First Circuit in this case applied its settled precedent construing the *Parratt-Hudson* doctrine to excuse denials of the pre-termination hearings required by *Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532 (1985), if the denial also violates state law and state law provides a post-termination remedy. That conclusion is shared by the Seventh Circuit, but rejected by four other courts of appeals. The First Circuit's holding is moreover wrong, conflicting not only with the holding in *Loudermill* but also with this Court's explicit rejection of an indistinguishable attempt to invoke the *Parratt-Hudson* doctrine in *Zinermon* v. *Burch*, 494 U.S. 113 (1990). Certiorari is warranted to resolve this entrenched circuit split and to reimpose the authority of this Court's precedents in this important area of the law.